

## REMARKS

In the Office Action mailed December 23, 2009, the Examiner rejected claims 24-27, 29-35 and 47-55. By way of the foregoing amendments and the markings to show changes Applicants have amended claims 24, 26, and 29. Applicants have amended claims 24 and 26 in compliance with 37 C.F.R. § 1.116. These amendments are intended to present the rejected claims in better form for appeal or make the claims allowable. The foregoing amendments are taken in the interest of expediting prosecution and there is no intention of surrendering any range of equivalents to which Applicant would otherwise be entitled in view of the prior art.

Further, by the present amendment, it does not follow that the amended claims have become so perfect in their description that no one could devise an equivalent. After amendment, as before, limitations in the ability to describe the present invention in language in the patent claims naturally prevent the Applicants from capturing every nuance of the invention or describing with complete precision the range of its novelty or every possible equivalent. See, Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., 62 USPQ2d 1705 (2002). Accordingly, the foregoing amendments are made specifically in the interest of expediting prosecution and there is no intention of surrendering any range of equivalents to which Applicants would otherwise be entitled.

### Telephonic Interview

Applicants would like to thank Examiner Nguyen for the time and courtesy extended to Applicants Representative Daniel Aleksynas on March 22, 2010. In this interview claims 24 and 26 were discussed in view of Toda. Specifically, it was pointed out that Toda does not disclose a step of **connecting** to the food product block or that the food product block is contacted by a means **during slicing**. Applicants representative requested Examiner Nguyen reconsider this rejection because Toda does not show either of these elements.

### Rejections under 35 U.S.C. § 112

The office action rejected claims 26, 49-53 and 55 under 35 U.S.C. § 112 first paragraph for failing to comply with the enablement requirements. Applicants respectfully traverse these rejections for the reasons set forth below.

The office action alleges that it is unclear how the means/gripper of claims 26 and 55 are driven by the food product block and the conveying means when it has its own motor. Applicants point to paragraphs 0012, 0027-0028, and 0038 of U.S. Patent Application Publication No. 2007-0214969. For example paragraph 0027 reads, "This embodiment of the method according to the invention has the advantage that the means have only to be driven and the drives only to be controlled to produce contact between the means and the food product block and optionally subsequently to remove the means from the feed passage. In the period in between, at least, **the means is not driven independently.**" (emphasis added) Applicants believe that the paragraphs provide adequate support and enable the invention, and respectfully request that the rejection be withdrawn.

The office action rejected claim 55 stating that it failed to comply with the written description requirement because the application did not teach the food product being driven by one conveying belt. Applicants point to claim 25 of U.S. Patent Application Publication No. 2007-0214969, which states in part "**the means (1, 18) is driven by at least one conveying means (4), which also conveys the food product blocks (2).**" Applicants believe that this provides adequate disclosure to support the structure described in claim 55. Applicants respectfully request that the rejection be withdrawn.

The office action rejected claims 24, 26, 27, 29, 31-35, and 49-54 under 35 U.S.C. § 112 second paragraph as indefinite.

The office action alleges that claim 24 has insufficient antecedent basis. Without acquiescence to this suggestion Applicants have amended claim 24. Applicants believe that this rejection has been rendered moot and respectfully request that the rejection be withdrawn.

The office action rejected claims 26 and 47 because of the expression "food product block by food product block." The office action alleges that this language is confusion. Applicants have amended claim 26 and believe that these amendments clarify this language. Applicants believe that this rejection has been rendered moot and respectfully request that the rejection be withdrawn. Claim 47, however, does not include this limitation. Applicants believe that this rejection is improper and respectfully request it be withdrawn.

The office action rejected claim 29. Without acquiescence to this suggestion Applicants have amended claim 29. Applicants believe that this rejection has been rendered moot and respectfully request that the rejection be withdrawn.

### **Rejections under 35 U.S. C. § 102**

The Office Action rejected claims 24, 26, 27, and 31 – 35 under 35 U.S.C. § 102 as being anticipated by Toda (WO 00/59689). It is well settled that a claim is invalid as anticipated under 35 U.S.C. § 102 only if “a single prior art reference discloses either expressly or inherently, each limitation of the claim.” *In re Cruciferous Sprout Litigation*, 301 F.3d 1343, 64 U.S.P.Q.2d 1202 (Fed. Cir. 2002). Applicants respectfully request that Examiner Nguyen reconsider the rejections set forth in this office action. Specifically, the Office Action has failed to point out where Toda teaches all of the elements of claims 24 and 26. For example the Office Action does not show where Toda teaches “conveyed towards the blade,” of claim 24, or “the food product block is conveyed towards the blade by at least one conveying means,” of claim 26. Further, the Office Action has failed to show where Toda teaches “**connecting** a means to a end, remote from the blade” and “characterized in that contact between the means and the food product block **occurs only during slicing of the respective food product block**,” of claim 24. The office action has not provided any facts or evidence where Toda teaches a step of **connecting**, and Applicants believe that it is not taught in Toda. The office action has failed to show all of the elements of claim 26, for example, “at any desired time **during slicing** of the food product block, the **rear end of the food product block is brought into contact in each case with a means**.” The Office Action failed to make any fact findings showing where Toda teaches any of these features. Applicants believe that the office action has not presented a proper anticipation rejection of claims 24 and 26, and respectfully request that the rejections be withdrawn.

### **Rejections under 35 U.S.C. § 103**

The Office Action rejected claims 29 and 49-51 under 35 U.S.C. § 103 as being unpatentable over Toda (WO 00/59689) in view of Holz (FR 2 677 573). The Office Action has failed to show where Toda teaches every element of claims 24, 26, and 55. “All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). “If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1070, 5 USPQ2d 1596 (Fed. Cir. 1988). Applicants point that the office action failed to show where Toda teaches “contact between the means and the food product block **occurs only during slicing of the respective food product block**,” (Claim 24) “at any

desired time **during slicing** of the food product block, the **rear end of the food product block is brought into contact in each case with a means**," (Claim 26) and "wherein the grippers attach the ends of the least two food product blocks **after slicing of the at least two product blocks has begun.**" (Claim 55) The office action has not presented any evidence where either Holz teach these limitations. Applicants do not believe that Holz cures this defect; therefore, Applicants respectfully request that the office action withdraw the rejections of claims 24, 26, 55, and their dependents.

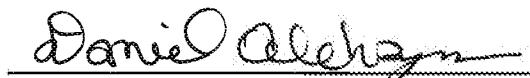
#### CONCLUSIONS

In view of Applicants' amendments and remarks, the Examiner's rejections are believed to be rendered moot. Accordingly, Applicants submit that the present application is in condition for allowance and requests that the Examiner pass the case to issue at the earliest convenience. Should the Examiner have any question or wish to further discuss this application, Applicant requests that the Examiner contact the undersigned at (248) 292-2920.

If for some reason Applicant has not requested a sufficient extension and/or have not paid a sufficient fee for this response and/or for the extension necessary to prevent the abandonment of this application, please consider this as a request for an extension for the required time period and/or authorization to charge our Deposit Account No. 50-1097 for any fee which may be due.

Respectfully submitted,

Dated March 23, 2010



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